

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2009-18486
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 3, 2009
Livingston County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on June 3, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On October 31, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On February 4, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On February 9, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On March 2, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 24, 2009, the State Hearing Review Team again denied claimant's application stating impairment lacks duration per 20 CFR 416.909. SHRT also commented that claimant's condition can improve with medical treatment compliance.

(6) Claimant is a 44 year-old man who is 5'8" tall and weighs 146 pounds after losing 40 lbs. in the last 5 years due to Crohn's disease. Claimant has a GED and some computer training. Claimant is able to read, write and do basic math.

(7) Claimant states that he last worked in September, 2007 welding at a metal fabrication company, job he held for 5 years. Claimant testified that he hurt his back and had absences due to Crohn's disease, but specifies he was laid off from this job and is collecting UCB currently. Claimant has been a welder/fabricator since 1984, but claims fumes and dirt are cancer causing.

(8) Claimant has a pending lawsuit about Worker's Compensation due to his back injury, and has been denied SSI but is appealing the denial. Claimant does not feel there is any job he could presently do because of his back and Crohn's disease, even though he is apparently able and available for work for UCB receipt purposes.

(9) Claimant alleges as disabling impairments: Crohn's disease, arthritis, back issues including beginning of stenosis, lumbar sprain and disk bulge in spine, and anxiety.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;

- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and testified that he has not worked since September, 2007. Claimant is not disqualified from receiving disability at Step 1. It is noted that the claimant is receiving UCB, condition of such receipt being that one must be able to work and available for work.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for duration of at least 12 months.

The objective medical evidence on the record includes a doctor's note of [REDACTED] stating that the claimant is on Pentasa medication for the Crohn's disease, he is tolerating this medication well with good control of symptoms, and it is helping him quite a bit. (Department's Exhibit I, page 49). Doctor's note of [REDACTED], states that they were contacted the day before by another family member who stated that the claimant had not been taking his Pentasa.

Claimant stated he stopped using Pentasa about a year ago, at which time he had shoulder surgery and was placed on Vicodin. The Vicodin firmed up his stools, and claimant decided to stop the Pentasa, he has felt better and does take Imodium Advanced one a day every other day or so with good control of diarrhea. Claimant stated his weight has been stable and he has no other complaints. Doctor discussed that staying on a medicine such as Pentasa may prevent recurrence of the disease, and it may help control symptoms. (Department's Exhibit I, page 47).

Claimant had right shoulder surgery in July, 2008, and a secure and complete rotator cuff repair was achieved. (Department's Exhibit I, pages 24 and 25).

Claimant was admitted to the hospital in November, 2008 due to having diarrhea, 10-12 bowel movements per day, losing almost a pound a day, and having chronic abdominal pain because of his uncontrolled Crohn's disease. Claimant reported his pain being 4/10, with relieving factor pain medication. Claimant was noncompliant with his medication due to financial issues. Past history of alcohol, cocaine and pain medication abuse was noted. Claimant reported using Vicodin at home for his pain, but that he had run out of the prescription from his primary care provider. Assessment was that of acute exacerbation of chronic Crohn's disease, noncompliant with the medication. (Department's Exhibit I, pages 15 and 16).

Claimant was back to the emergency department the following week for another Crohn's disease flare-up. Claimant again stated that he has no money and can't afford his medication; he is having recurrent abdominal pain and reported 7 to 15 bowel movements daily. Claimant was taking Pentasa but claimed it had not been helping. Claimant stated he has to take Vicodin to control the abdominal pain and "firm up the stools". Abdominal examination revealed no distention. Claimant reported discomfort and pain to palpation of his right lower quadrant but no obvious masses, fullness or otherwise was detected. Perianal examination reveals no disease, and digital rectal examination revealed no palpable abnormalities, although the claimant reported

pain on examinations. Impression was that of ileitis/Crohn's disease, probably flare secondary to poor medication compliance, which appears to be strictly an issue of financial concerns. Case nurse set up the claimant with a pharmacy program for his Pentasa as well as getting him a temporary supply of all medications upon discharge. Claimant's condition was stable upon discharge with activity as tolerated with no restrictions, and no alcohol or smoking.

(Department's Exhibit I, pages 3 and 4, and 8-11).

Progress Note for an internist office visit of December 22, 2008 quotes the claimant as saying he has not been feeling well, he has been feeling weak, and he has been having diarrhea. Claimant has been on medications for his Crohn's disease, but was not taking it for quite some time. Claimant reported having quite smoking a week ago, alcohol about seven years ago where before he was a binge drinker on weekends, and that he had also smoked marijuana in the past. It was noted that the claimant would need to be on medications, and that he probably needs routine colonoscopy, which has not been done recently. (Department's Exhibit I, page 18).

There is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has had flare ups of Crohn's disease in November, 2008, due to being noncompliant with his medication because of economic issues. However, claimant did not take prescribed medication back in year 2006 when he was still employed. It also appears that claimant was set up with a pharmacy program due to his economic issues in order to get Pentasa medication when he was hospitalized in November, 2008. Claimant testified that he is not taking any medications at the time of the hearing. Claimant did not present any more current medical evidence since November, 2008, of the need for emergency room treatment of his Crohn's disease since that time. Claimant is still smoking at the time of the hearing even though he was advised not to in November, 2008. Claimant's medical record contains no evidence of issues with his back and arthritis that would

show that these conditions are an impairment that precludes employment. Claimant also testified that while he finds it difficult to sit and stand, he can walk a mile or two and does so daily, prays, reads AA book, sits around and watches TV, and goes to AA meetings. This Administrative Law Judge finds that the medical record combined with claimant's own hearing testimony about his physical condition is insufficient to establish that claimant has a severely restrictive physical impairment.

There is no evidence in the record indicating that claimant suffers mental limitation, even though he claims he suffers from anxiety. The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3, where the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, if claimant had not already been denied at Step 2, the Administrative Law Judge would have to deny him again based upon his ability to perform past relevant work. Claimant's past relevant work was doing welding/metal fabrication, job he held for 5 years until he was laid off in September, 2007. Claimant is currently receiving UCB, indicator that he claims he is able and available to work. While Crohn's disease flare ups may temporarily affect claimant's ability to work, conclusion that such flare ups make him unable to perform his past

work cannot be made. In addition, no medical evidence has been presented that the claimant has arthritis and back issues that would make him unable to perform his past work. Finding that the claimant is unable to perform work which he has engaged in in the past cannot therefore be reached and the claimant is denied from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform other jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be

very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls....

20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform tasks from his prior employment, or that he is physically unable to do at least medium work if demanded of him. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity to perform other work. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light, sedentary and medium work, or possibly even heavy work. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is age 44), with limited education and an unskilled work history or no work history at all who can perform even only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.18. Claimant has a GED and what appears to be skilled (welder) work history, and has presented no evidence of physical limitations that would prevent him from performing more than sedentary work.

The claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of

impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light, sedentary and medium work even with his alleged impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED, and it is SO ORDERED.

/s/

Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 25, 2009

Date Mailed: August 26, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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